REMARKS/ARGUMENTS

This is in response to the final Office Action mailed June 5, 2003, in the above-referenced application. Claims 1-14 are rejected under 35 USC § 103 as unpatentable over the combination of U.S. Patent No. 6,419,946 and U.S. Patent No. 5,985,296. Applicants respectfully traverse this rejection.

The Office states that the comparative data presented in the Rule 132 Declaration is insufficient, arguing in part that test results are not compared under identical conditions. The Office notes that the composition of Example 1 (invention) includes 2% glyceryl stearate citrate and 0.44% retinol cyclodextrin complex, whereas Example 2 (comparative) includes 6.5% glyceryl stearate and 0.19% retinol cyclodextrin complex.

Applicants respectfully submit that the comparative data is persuasive of the patentability of the present invention. Applicants have found that the recited surfactants can unexpectedly significantly improve the stability of a retinoid active agent. As discussed in the application, retinoids are unstable and susceptible to oxidative decay. This instability limits the effectiveness of such compounds and can limit the concentration that can be used in a given application.

The different concentrations of surfactant and active agent in the examples of the Rule 132 Declaration reflect the difficulties associated with the use of retinoids in cosmetic applications. If anything, the different concentrations highlight the unexpected benefits of the present invention. To this end, the example of the invention includes less surfactant than the comparative example. Despite the reduced amount of surfactant, however, the composition of the invention effectively stabilized a greater amount of retinoid active agent than the comparative example. In effect, the comparative data emphasizes the synergistic effect of the recited components; the composition of the invention stabilized higher concentrations of active agent, despite a reduced amount of stabilizing agent.

Applicants respectfully submit that the claimed invention is patentable, even without considering the comparative data. The Office notes "one cannot show nonobviousness by attacking references individually." Yet, the cited art must be considered in its entirety for all that it fairly teaches, which is what Applicants have done.

The '946 patent is directed to nanoemulsions stated to be stable on storage. The '946 patent differentiates nanoemulsions from conventional emulsions and addresses specific

problems associated with the stability of nanoemulsions per se. The reference here is to the stability of the nanoemulsion per se, and not the stability of any active agent.

The '946 patent does not address problems associated with the stability of active agents, much less retinoids. Indeed, the Office acknowledges that the '946 patent is silent with respect to retinoids. The '946 patent certainly does not teach or suggest that the surfactants described therein could act as stabilizing agents for any active agent, much less for retinoids.

The '296 patent addresses a different problem than that of the '946 patent. The '296 patent is directed to complexes of γ-cyclodextrin and retinol or retinol derivatives, stated to stabilize retinol or retinol derivatives. Having apparently solved the problem there is no motivation to modify the compositions discussed therein, much less look to the '946 patent which addresses an entirely different issue. The '296 patent actually teaches away from adding additional stabilizing agents to its composition, contrasting the invention discussed therein with prior formulations that required extra stabilizing substances. That surfactants can be added to the compositions is not enough to establish obviousness, particularly in view of the discussion at column 4, lines 26-29, of specific surfactants that differ significantly in structure and function from the claimed compounds.

The Office states that the "idea of combining the ingredients flows logically from the art for having been used individually in cosmetic compositions." Yet the test for obviousness is not whether individual components have been used individually, or whether such individual components could have been combined. There must be some motivation or suggestion to make the proposed combination. Absent such a showing in the prior art, the Examiner has impermissibly used the Applicants' teaching to hunt through the prior art for the claimed elements and combine them as claimed. The requisite motivation is missing in the present case, and accordingly, Applicants respectfully request withdrawal of this rejection and indication of the patentability of the claimed invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the U. S. Patent and Trademark Office at Fax No. (703) 872-9306 on the date shown below.

Grace R. Rippy

December 5, 2003
Date